

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 9, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF 06od-219
Oahu

Consent to Assign General Lease No. S-5654, Cates International, Inc., Assignor,
to Grove Farm Fish and Poi, LLC, Assignee, Ewa, Oahu, Tax Map Key: (1) 9-1-
005:Seaward

APPLICANT:

Cates International, Inc., as Assignor, to Grove Farm Fish and Poi, LLC, a domestic
limited liability company, whose business and mailing address is 780 Kaipii Street,
Kailua, Hawaii 96734, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Ewa, Oahu, identified by Tax Map Key: (1) 9-1-
005:Seaward, as shown on the attached map labeled Exhibit A.

AREA:

28.077 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ☐ NO ☒

CHARACTER OF USE:

Mariculture purposes.

TERM OF LEASE:

Twenty (20) years, commencing on March 9, 2001 and expiring on March 8, 2021. A rental reopening is scheduled for March 9, 2011.

ANNUAL RENTAL:

\$1,400, or one percent (1%) of the gross revenue, whichever is greater. On December 20, 2006, Cates submitted an annual report for the percentage rent due for the period March 9, 2004 to March 8, 2005, reporting gross sales of \$510,013.40 for this period (\$5,100.13 rent due). However, no annual report has been submitted for the period March 9, 2005 to March 8, 2006.

CONSIDERATION:

\$ 5,000,000.00 (see Exhibit B).

RECOMMENDED PREMIUM:

The proposed premium is still being computed. This will be presented at the Board meeting.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u> </u>	NO <u>X</u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

Cates International, Inc. is not in good standing according to the Department of Commerce and Consumer Affairs' website, as of the date of preparation of this submittal, January 31, 2007.

APPLICANT REQUIREMENTS:

1. That the Applicant pays any recommended premium.
2. That the Applicant be in good standing according to the Department of Commerce and Consumer Affairs.
3. That the Applicant submit an annual report for percentage rent due for the period March 9, 2005 to March 8, 2006 and pay any percentage rent due.

REMARKS:

Cates International, Inc. (Assignor) has entered into an agreement with Visionary, LLC (Visionary), a Virginia limited liability company, to establish together a Hawaii limited liability company named Grove Farm Fish and Poi, LLC (Assignee) for the following purposes:

- 1) Acquiring substantially all of the assets of the Assignor;
- 2) Acquiring the expertise in the fish hatchery and open ocean aquaculture business from the Assignor; and
- 3) Engaging in the fish hatchery and open ocean aquaculture business.

Pursuant to the "Definitive Investor Agreement Regarding Grove Farm Fish & Poi, LLC" submitted by the Applicants (see Exhibit C), the President of Cates International, John R. Cates (Cates) will have a forty-nine percent (49%) ownership interest in the Assignee, while Visionary will have fifty-one percent (51%). In addition, Cates will enter into an employment agreement to remain with the Assignee for five (5) years, and enter into a non-competition agreement, which will remain valid while Cates is employed and/or retains his ownership interest.

According to Cates, the existing operation is currently operating at approximately twenty-five percent (25%) capacity. Therefore, one purpose of the Lease assignment is to provide a sizeable infusion of capital to expand the existing operation.

The Assignee is a newly formed entity to be governed by a five (5) person Board of Managers. Two of the managers are Cates and John Forster. According to the Applicants, both are qualified aquaculturists. Due to the retention of Cates as a Manager of the new entity, and the addition of a second aquaculturist, staff believes the new entity will have the required experience to maintain the Character of Use specified in the lease, i.e. for mariculture purposes.

The Assignor is current with all lease terms and conditions, including insurance and performance bond, with the exception of the annual report for the percentage rent due for the period March 9, 2005 to March 8, 2006, as cited above. Assignor was sent two Notice of Defaults during the term of the lease, for insurance dated July 16, 2003 but rescinded on July 21, 2003, and again for insurance, dated July 25, 2006 but rescinded on August 8, 2006.

Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The next rental reopening is scheduled for March 9, 2011. There are no current outstanding rental reopening issues.

No agency or community comments were solicited, as the character of use of the leased

February 9, 2007

premises will remain unchanged.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all the Applicant requirements listed above, consent to the assignment of General Lease No. S-5654, from Cates International, Inc., as Assignor, to Grove Farm Fish and Poi, LLC, as Assignee, subject to the following:

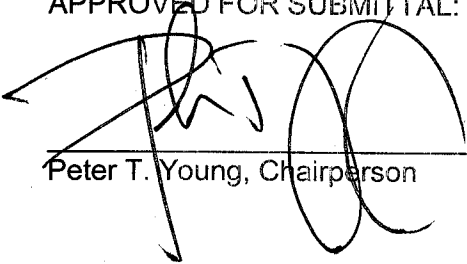
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

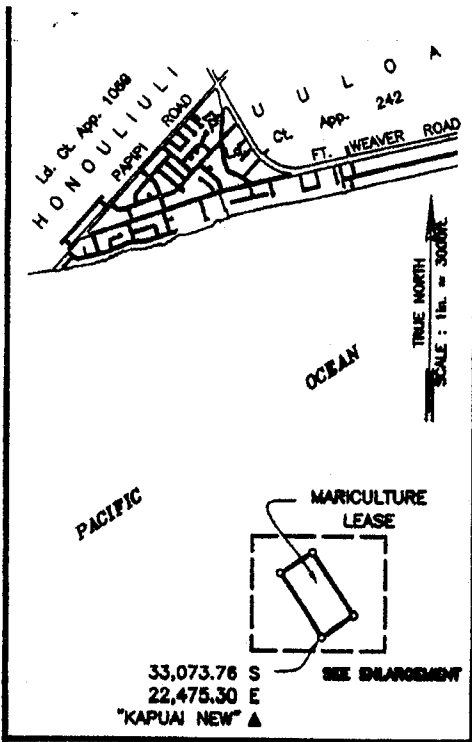


Steve Molmen
Supervising Land Agent

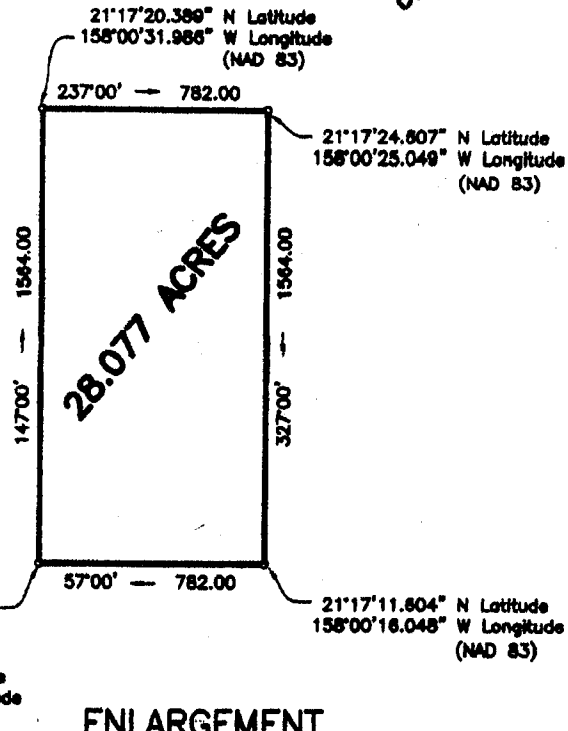
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



PACIFIC



ENLARGEMENT
Scale: 1 inch = 500 feet

PRELIM. APPR'D.
Department of the
Attorney General

MARICULTURE LEASE

Situate in the offshore waters of
Puuloa, Ewa, Oahu, Hawaii

Scale: 1 inch = 3000 feet

JOB 0-392(2001)

C. BK.

REDUCED NOT TO SCALE

TAX MAP 9-1-05: Seaward

C.S.F. NO. 23,280

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "B"

FDR April 1, 2002

EXHIBIT "A"

GROVE FARM FISH & POI FORMATION

	<u>Visionary To Company</u>	<u>Cates to Company</u>	<u>Company</u>
Assets			
Cash			
51% interest - cash	500,000		500,000
Add'l capital - <u>up to \$4.5 million</u>	4,500,000		4,500,000
Purchase of intellectual property			(400,000)
Purchase PP&E & intellectual property			(100,000)
Cates annual salary			(880,000)
Cates annual bonus			(500,000)
PP&E and leasehold improvements			100,000
Intangible assets			
Intellectual property			400,000
Intellectual property & no-compete-covenant		1,580,000	1,580,000
Total Assets	<u>5,000,000</u>	<u>1,580,000</u>	<u>5,200,000</u>
Liabilities			
Accounts Payable		(85,000)	(85,000)
Debt		(1,015,000)	(1,015,000)
Total Liabilities		<u>(1,100,000)</u>	<u>(1,100,000)</u>
Equity			
51% interest	(500,000)		(500,000)
49% interest		(480,000)	(480,000)
Add'l capital	(4,500,000)		(4,500,000)
Cash to CATES			1,380,000
Total equity	<u>(5,000,000)</u>	<u>(480,000)</u>	<u>(4,100,000)</u>
Total Liabilities & Equity	<u>(5,000,000)</u>	<u>(1,580,000)</u>	<u>(5,200,000)</u>

EXHIBIT "B"

**DEFINITIVE INVESTOR AGREEMENT
REGARDING
GROVE FARM FISH & POI, LLC**

This Agreement is made and entered into effective as of June 5, 2006 by and between JOHN R. CATES ("Cates") and VISIONARY, LLC, a Virginia limited liability company ("Visionary").

Whereas it is intended by the parties to establish a new Hawaii limited liability company to be known as GROVE FARM FISH & POI, LLC (the "Company") for the purpose of acquiring (a) substantially all of the assets of CATES INTERNATIONAL, INC., a Hawaii corporation ("CII") and (b) expertise in the fish hatchery and open ocean aquaculture business from Cates, and thereafter engaging in the fish hatchery and open ocean aquaculture business.

Now Therefore, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. Organization of the Company. Cates and Visionary agree to establish a new Hawaii limited liability company to be known as Grove Farm Fish & Poi, LLC by the filing of Articles of Organization in the form attached hereto as Exhibit A, and the execution and delivery of the Operating Agreement in the form attached hereto as Exhibit B.

1.1 The ownership interest of the Company (the "Percentage Interests") will be held as follows: 51% by Visionary, and 49% by Cates.

1.2 The Articles of Organization and Operating Agreement will provide for a five (5) person Board of Managers. Three (3) Managers shall be appointed by the Visionary, and two (2) Managers shall be appointed by Cates.

1.3 The Company shall deliver to the Members unaudited (or audited, if available) annual and quarterly financial statements.

1.4 Tax distributions will be made each year to the Members in amounts equal to the state and federal tax liabilities of each Member resulting from the allocable profit resulting from the Company's operations.

1.5 At the discretion of the Board of Managers, and, unless otherwise determined by the Board of Managers, the Company may make distributions in cash or in kind from time to time to the Members in the following order: (i) First, to pay a cumulative annual return to the Members on their invested capital at the rate equal to the First Hawaiian Bank prime rate plus 2.5%, (ii) secondly to return invested capital to the Members and (iii) third to the Members in accordance with their percentage interests.

2. Undertakings of Visionary. Subject to the preconditions listed in Section 5 below, Visionary agrees to contribute \$500,000 to the Company in exchange for a 51% Membership and Percentage Interest, and to subsequently contribute up to \$4,500,000 of additional capital to the

EXHIBIT "C"

Company to be used for capital funding and the funding of operations necessary to execute the business expansion as outlined and anticipated in the Company's Cash Flow Projection attached hereto as Exhibit C.

3. Undertakings of Cates Regarding CII. Subject to the preconditions listed in Section 5 below, Cates agrees to cause CII to sell all of the assets currently owned by CII, including but not limited to the operating vessels, open ocean cages, automated feeder, hatchery facilities and equipment, leases and all other operating assets of CII to the Company for the sum of \$100,000 together with the assumption by the Company of \$1,015,000 in debt held by the National Marine Fisheries Service and \$85,000 in accounts payable and current liabilities.

4. Undertakings of Cates. Subject to the preconditions listed in Section 5 below, Cates agrees (a) to sell a portion of his expertise to the Company for the sum of \$400,000, (b) to contribute the remainder of his expertise to the Company in exchange for a 49% Membership & Percentage Interest, (c) to enter into the Employment Agreement with the Company as described in Section 6 below, and (d) to enter into a Non-competition Agreement with the Company as described in Section 7 below. As part of the consideration for the sale and contribution of Cates's expertise to the Company, Cates agrees to fully document for the Company all processes and procedures currently used in CII's operations and as developed from time to time by the Company.

5. Mutual Preconditions. The following shall be preconditions to the Closing and to the obligation of Cates and Visionary under this Definitive Investor Agreement:

(a) The State of Hawaii shall have consented to the assignment of the Aquaculture and the Hatchery leases to the Company from CII.

(b) Aaron Moriwake shall have entered into an employment agreement as Hatchery Manager in a form acceptable to the Board of Managers.

(c) The National Marine Fisheries Service shall have consented to the assumption of the credit facility held by CII by the Company.

6. Cates Employment Agreement. The Company shall enter into an employment agreement with Cates in the form attached hereto as Exhibit D (the "Cates Employment Agreement") pursuant to which Cates shall agree to remain employed by the Company until the fifth anniversary of the Closing.

6.1 Cates's initial salary shall be \$120,000 per annum which salary shall be increased to (a) \$140,000 per year when the Phase I Hatchery is completed, (b) \$160,000 per year when Phase I of the Cages Project is completed, (c) to \$180,000 per year when Phase II of the Hatchery is completed and (d) to \$200,000 per year when Phase II Cages Project is completed. In addition Cates will be paid a bonus of \$100,000 on each anniversary date of the Closing so long as Cates shall be then employed by the Company beginning with the first anniversary and continuing through the fifth anniversary of the Closing.

6.2 The Membership Interest held by Cates shall be subject to forfeiture the following events (a) if during the five year term of the employment agreement Cates terminates his employment without cause or (b) Cates is terminated by the Company for cause; provided, however, that the Membership Interest subject to such forfeiture shall be reduced in five equal amounts on each of the first five anniversaries of the Closing Date.

6.3 In the event that Cates terminates his employment during the five year term of the employment agreement for cause, the Company shall have the option to purchase Cates's membership interest for the fair market value as agreed by the parties or as determined by a qualified independent appraiser. In the event that during the five year term of the employment agreement (a) the Company terminates Cates's employment for cause, or (b) Cates terminates his employment without cause the Company shall have the option to purchase Cates's remaining membership interest, if any, for an amount equal to that Cates' remaining interest's percentage of the then depreciated book value of the Company.

7. Non-Competition Agreement. The parties will enter into non-competition agreement in the form attached hereto as Exhibit E, providing that (a) during the period in which Cates is employed by the Company and/or retains any membership interest in the Company neither Cates or the Visionary will compete with the Company or use the proprietary knowledge of the Company in any other fish farming or hatchery venture, and (b) if Cates is no longer employed by the Company and retains no membership interest in the Company, Cates will be subject to a two (2) year non-competition restriction in the State of Hawaii.

8. Use by CII of Certain Assets of the Company. The Company shall permit CII access certain of the equipment owned by the Company for use by CII in the marine salvage business. CII shall indemnify, defend and hold the Company harmless from all claims and demands of every kind and nature arising from such use, and shall name the Company as an additional insured on appropriate insurance coverage as approved by the Company. During the initial two (2) years after Closing, the Company and CII will contribute to the maintenance and operating expenses for the equipment to be used in the marine salvage business by paying over to the Company all the vessel and equipment fees it charges its customers in accordance with a schedule of fees to be agreed upon between the Company and CII. Thereafter if CII's marine salvage business is continued the Company and CII will agree upon a basis for the allocation of such maintenance and operating expenses. The Company and CII will develop and enter into a written agreement specifying the terms of such use prior to the commencement of use by CII including provisions for insurance and documentation that any Company employees if and whenever engaged by CII in marine salvage operations are not doing so as employees of the Company.

9. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.


10. No Third-Party Rights. This Agreement is not intended to create any rights in or to benefit any third parties.

11. Entire Agreement. This Agreement and the Exhibits attached hereto, contain the entire agreement of the parties relating to the subject matter hereof, and supercedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended only by a written instrument signed by both parties.

12. Representation. Cates recognizes that the law firm of Case Lombardi & Pettit is acting as counsel for Visionary with regard to this Agreement, and that Cates has been advised to engage his own independent counsel.

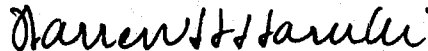
13. Counterparts. This Agreement may be signed in counterparts.

In witness whereof, the parties have executed this Agreement as of the date first above given.



JOHN R. CATES

VISIONARY, LLC, A Virginia
limited liability company

By 

Warren H. Haruki
Its Chief Executive Officer

EXHIBITS

- A. Articles of Organization of the Company;
- B. Operating Agreement of the Company;
- C. Cash Flow Projection of the Company;
- D. Cates Employment Agreement;
- E. Non-Competition Agreement;